IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
First Appeal No.503 of 2007
In
B.C.C.C.L.C. Suit No.1664 of 1997

M/s.Power Pack Transformers. .. .. Appellants
v/s.

The Brihanmumbai Mahanagar Palika & ors. .. Responents

Mr.O.A. Pandey i/by M/s.Pandey & Co. for Appellants.

Mrs.Nisha Dabhade for Rs.Nos.1, 3 & 4.

CORAM : SMT.ROSHAN DALVI, J.

DATED : 13th April, 2007

P.C. :

1. This Appeal challenges the judgment of the Bombay City Civil Court dismissing the Plaintiffs' Suit. The Plaintiffs are the Appellants herein. In the Suit, the Plaintiffs challenged the Notice issued under Section 351 of the BMC Act.

2. It has been the Plaintiffs' case that the structure for which the notice was issued existed prior to 1962. The Plaintiffs' witness Mr.Ashok Goel examined himself and has admitted that he has no documentary evidence to show such existence from 1962.

3. The said witness produced assessment bill for the year 1988-89 in evidence which has been considered by the

learned Judge. This evidence shows that the Plaintiffs did not make any inquiry as to whether the dimension of the structure is as per the sanctioned plan. They made no inquiries in the office of the Tahsildar as to whether the suit premises were shown in the city survey land.

4. The learned Judge has observed that the structure has been constructed in open space abutting the building in the compound. No structure can be constructed in the compulsory open space of the building or abutting any building of the compound. The judgment does not suffer from any error. Appeal is dismissed.

5. In view of the dismissal of the Appeal, nothing survives in the Civil Application and it is disposed of as infructuous.

(SMT. ROSHAN DALVI, J.)